

REMARKS

Claims 16-33 were pending in the present application. No claims were withdrawn, cancelled, amended, or added. Accordingly, claims 16-33 remain under consideration. Previous amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. No new matter has been added.

Rejections under 35 U.S.C. §112

Claims 1-24 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention.

Claims 1-15 were previously canceled.

Applicant respectfully submits that Claims 21 and 24 are distinct and further limiting from Claim 16 and of each other.

Claim 16 limits a delivery of energy to the target tissue. Claims 21 and 24, each dependent directly from Claim 16, further limit a delivery of energy to the distal end of a locator element. Claims 16, 21 and 24 do not limit the energy being delivered in Claim 16 to be the same energy delivered in Claims 21 or 24, nor do Claims 16, 21 and 24 limit the energy to prevent the same energy from passing through both the target tissue and the distal end of the locator device. Claims 16, 21 and 24 merely recite separate limitations regarding energy delivery.

Additionally, Claim 24 is further limiting than Claim 21 at least because Claim 24 recites that "the curved distal end comprises a curved distal tip".

Therefore, Applicant submits that Claims 16-24 are not indefinite under 35 U.S.C. §112, second paragraph, and are in condition for allowance.

Rejections under Non-Statutory Double Patenting

Claims 16-33 are rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 28, 32-37, 49, 61, 67, 94, 98-103, 115, 127, and 133 of U.S. Patent No. 6,564,806.

A terminal disclaimer is filed herewith for the present application with respect to U.S. Patent No. 6,564,806. U.S. Patent No. 6,564,806 and the present application are commonly owned.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. FGRTNM00401. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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